

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ESTATE OF JOHN SCHROEDER by
and through DAWN TUCKER,
ADMINISTRATRIX,

Civ. No. 1:22-cv-01208-NLH-EAP

Plaintiff,

OPINION and ORDER

v.

PORT AUTHORITY TRANSIT
CORPORATION, et al.,

Defendants.

APPEARANCES:

A. MICHAEL BARKER
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HILLMAN, District Judge

WHEREAS, Plaintiff filed a complaint in this Court on March 4, 2022, alleging violations of the Federal Employer's Liability

Act ("FELA"), Federal Locomotive Inspection Act ("LIA"), the Federal Safety Appliances Act ("FSAA"), and state law claims of negligence and wrongful death against defendants Port Authority Transit Corporation ("PATCO") and Delaware River Port Authority ("DRPA") (collectively, "Defendants") (ECF 1);

WHEREAS, Plaintiff alleged in the complaint subject matter jurisdiction premised on federal question jurisdiction pursuant to 28 U.S.C. § 1331 for the claims arising under FELA, and supplemental jurisdiction pursuant to 28 U.S.C. ¶ 1367 for the state law claims (ECF 1 at ¶¶ 4-6);

WHEREAS, Defendants filed an answer on May 5, 2022 (ECF 10);

WHEREAS, on December 22, 2022, Defendants filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Motion to Dismiss") (ECF 27);

WHEREAS, in the Motion to Dismiss, Defendants allege that this Court does not have federal question jurisdiction pursuant to 28 U.S.C. § 1331 because they allege that Plaintiff cannot state a claim under FELA, as FELA does not apply to PATCO. (ECF 27 at 7). Thus, because jurisdiction is premised on Plaintiff's FELA claims, there is no federal question jurisdiction. (Id.). Defendants further assert that the Court therefore also lacks supplemental jurisdiction (Id.);

WHEREAS, whether PATCO is subject to FELA is a novel

question before this Court;

WHEREAS, on December 22, 2022, Defendants filed a Motion for Stay of Discovery, seeking to stay all discovery until their Motion to Dismiss is resolved (ECF 28);

WHEREAS, on January 23, 2023, Plaintiff filed a letter brief in opposition to Defendants' Motion to Stay, requesting that jurisdictional discovery be permitted to proceed in order to better address the question of subject matter jurisdiction that the Motion to Dismiss raises (ECF 33);

WHEREAS, on January 27, 2023, Defendants filed a letter in reply to Plaintiff's opposition to Defendants' Motion to Stay (ECF 35);

WHEREAS, on February 7, 2023, Plaintiff filed its Response in Opposition to Defendants' Motion to Dismiss, arguing that PATCO is subject to FEHA and reiterating its request for jurisdictional discovery (ECF 37);

WHEREAS, on February 27, 2023, Defendants filed their Reply in support of their Motion to Dismiss (ECF 43);

WHEREAS, following Court approval, on March 24, 2023, Plaintiff filed a Sur-Reply in Opposition to Defendants' Motion to Dismiss (ECF 47);

WHEREAS, where the Court's jurisdiction is in question and unless a plaintiff's claim is "clearly frivolous," generally jurisdictional discovery should be permitted. Massachusetts

School of Law at Andover, Inc. v. American Bar Ass'n, 107 F.3d 1026, 1042 (3d Cir.1997);

WHEREAS, Defendants' challenge to subject matter jurisdiction is a factual attack, allowing this Court to weigh and consider evidence outside of the pleadings. See Gould Elecs. Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000);

THEREFORE, it is on this 17th day of May 2023,

ORDERED that Plaintiff's request for jurisdictional discovery be, and the same hereby is, GRANTED; and it is further

ORDERED that Defendants' Motion to Stay (ECF 28) be, and hereby is, GRANTED as to discovery related to liability and damages and DENIED in part as to jurisdictional discovery; and it is further

ORDERED that Defendants' Motion to Dismiss (ECF 27) be, and hereby is, DENIED without prejudice.

At Camden, New Jersey

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.